

**BEFORE THE APPEALS BOARD**

**FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**WILLIE JAMES MOORE**  
Claimant

VS.

**THE BOEING COMPANY-WICHITA**  
Respondent

AND

**AMERICAN MANUFACTURERS MUTUAL  
INSURANCE COMPANY**  
Insurance Carrier

AND

**WORKERS COMPENSATION FUND**

Docket No. 201,196

**ORDER**

The respondent and its insurance carrier request review of the Preliminary Hearing Order of Administrative Law Judge John D. Clark dated October 31, 1995.

**ISSUES**

The Administrative Law Judge ordered an independent medical evaluation by Paul Lesko, M.D. The respondent and its insurance carrier requested this review and asked the Appeals Board to review the issue of whether claimant sustained personal injury by accident arising out of and in the course his employment with the respondent.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the record, for purposes of preliminary hearing the Appeals Board finds:

(1) The Appeals Board has jurisdiction to review this Preliminary Hearing Order under K.S.A. 44-534a.

(2) The Preliminary Hearing Order should be affirmed. Although it is apparent claimant is unsure of the actual date of accident, he testified he experienced low back pain in early January 1995 while lifting a jig, that witnesses were present, and that he immediately notified his supervisor and requested medical care. Respondent presented no evidence to controvert those statements. Claimant introduced the medical records of Denis Knight, D.O., who apparently saw claimant on January 3, 20, 31, February 3, and March 9, 1995. Because the first notation of a back injury sustained by claimant in January 1995 appears

in the March office notes, in order to find claimant sustained a compensable accidental injury, the Administrative Law Judge had to find claimant a credible witness and accept his version of the accident. The Administrative Law Judge had the opportunity to observe claimant testify and assess his demeanor. In this instance, the Appeals Board defers to the Judge's opinion of claimant's credibility. Therefore, the Appeals Board finds for preliminary hearing purposes it is more probably true than not that claimant sustained personal injury by accident arising out of and in the course of his employment with the respondent.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Preliminary Hearing Order of Administrative Law Judge John D. Clark dated October 31, 1995, should be, and hereby is, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of December 1995.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Lawrence M. Gurney, Wichita, Kansas  
Eric K. Kuhn, Wichita, Kansas  
Chris Cole, Wichita, Kansas  
John D. Clark, Administrative Law Judge  
Philip S. Harness, Director